

of the highest character and unquestioned integrity.

In short, this is an outstanding nominee, and an outstanding nomination.

On March 5, after thorough consideration, a bipartisan majority of the Judiciary Committee—13 to 3—voted to report Dean Kagan's nomination. I urge my colleagues to confirm her without delay, so she can begin the critical task of representing the United States in the Supreme Court.

Mr. President, I yield the floor to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I wish to share my thoughts about the nomination of Elena Kagan to be Solicitor General.

I have strong concerns about her nomination and will not support her nomination. I do believe the President, like all Presidents, should be entitled to a reasonable degree of deference in selecting executive branch nominees. But for some of the reasons I will set out, and one in particular, I am not able to support this nomination and will not support it.

I believe her record shows a lack of judgment and experience to serve as the Nation's chief legal advocate—a position many have referred to as the Supreme Court's "tenth Justice." It is also a position that has been called the best lawyer job in the world.

Well, so far as I can observe, other than time in the White House Counsel's Office, Dean Kagan has only practiced law for 2 years in a real law firm practicing law. She had very limited experience in the things you would look for in a person of this nature.

But let me discuss one defining moment in her career that I was sort of indirectly involved in because of legislation that was percolating in the Congress, in the Senate and in the House, and it means a lot to me.

During her tenure as dean, Ms. Kagan barred the U.S. military from coming on the Harvard Law School campus to recruit young law graduates to be JAG officers in the U.S. military. That was from November of 2004 through September of 2005. She barred them from coming and recruiting on campus while 150,000 of our finest men and women in this country were serving in combat in Iraq and Afghanistan and during a time in which 938 troops died in combat, preserving the rights of people like law deans, faculty, and students to have all the opinions they want. Her decision to bar the military from her campus during a time of armed conflict represents exceedingly poor judgment and leadership, particularly for someone who wants to lead the Department of Justice, the executive branch, and support the military of the United States.

By refusing to allow military recruiters on the Harvard Law School campus, she placed her own opposition to military policies above the need of our military men and women to receive good legal advice, even from Harvard

lawyers. And she did so at a time when the military, serving in conflicts in two foreign countries, was facing a host of complex legal issues. We are still fighting over them, for that matter. Maybe it would have helped if we had some of those graduates participating in them.

I don't believe she ever had a basis to have barred the military from her school's campus, and I believe she should have had the judgment to realize the signal and the impact that was being sent to our military and to the students who want to support and serve in the military. Indeed, President Obama should have realized the signal he was sending by nominating her to this position.

Flagg Youngblood wrote an op-ed in the Washington Times on January 30 and this is what that op-ed stated. I will quote from that article. I think it makes a point. This is a military person:

Since the Solicitor General serves as the advocate for the interests of the American people to the Supreme Court, we're expected to believe Kagan is the best choice? Her nomination smacks of special interest, aimed at protecting the Ivy League's out-of-touch elitism at the expense of students, taxpayers, and our military alike.

And what about the qualified students who desire to serve our country?

In the military, he is referring to.

Second-class, back-of-the-bus treatment, that's what they get, typically having to make time-consuming commutes to other schools and, much worse, the ill-deserved disdain of faculty and peers on their own campuses.

The military, nobly and selflessly, stands alert at freedom's edge, ready to defend our Nation in times of crisis, and should therefore be honored, and, as most Americans would argue, given preferential treatment, for guarding the liberties that academics such as Kagan profess to protect.

That's precisely why Congress intervened more than a decade ago, at the behest of a large majority of Americans who recognize and appreciate what our military does, to fulfill the Constitution's call for a common defense among the few, enumerated Federal powers. And, to stop financing those who undermine that fundamental duty. Yet, left-wing views like Kagan's still disparage the sacrifices our military makes and cause real, quantifiable harm to students and to our Nation at taxpayer expense.

Well, Mr. Youngblood's editorial—he felt deeply about that—deserves, I think, extra force and credibility because he was affected by similar policies when he tried to participate in ROTC while attending Yale University during the 1990s. Due to Yale's exclusion of the ROTC from campus, Mr. Youngblood was forced to travel because he wanted to serve his country, 70 miles to commute to the University of Connecticut to attend the military ROTC classes. His ordeal—and many like it—led to the passage of the Solomon amendment, which is the Federal law that requires colleges to allow military recruiters on campus in order to be eligible for Federal funds.

Well, let me say, that amendment didn't order any university to admit

anybody or to allow anybody to come on campus; it simply says when you get a bunch of money from the Federal Government, you at least need to let the military come and recruit students if they would like to join the U.S. military and not exclude them.

So the Solomon amendment is critically important here because it shows that Ms. Kagan's decision to block the military from Harvard Law School's campus was not just wrong as a matter of public and military policy. It was also clearly wrong as a matter of law. While dean at Harvard, Ms. Kagan was a vocal critic of the Solomon amendment. She called the law immoral. She wrote a series of e-mails to the Harvard Law School community complaining about the Solomon amendment and its requirement—horrors—that federally funded universities, if they continue to get Federal money, ought to allow military recruiters on campus or lose the Federal money. She thought that was horrible.

I should note that Harvard receives hundreds of millions of dollars in Federal funding: \$473 million in 2003, \$511 million in 2004, and \$517 million in 2005. That is a lot of money. The Federal highway budget that goes to the State of Alabama is about \$500 million a year. Harvard University gets that much. By opposing the Solomon amendment, Ms. Kagan wanted Harvard to be able to receive these large amounts of taxpayers' dollars without honoring Congress's and President Clinton's judgment that military recruiters were eligible to come on campus. Under the Solomon amendment, Harvard has always had the option of declining Federal funds and relying on its big endowment—\$34 billion—and their tuition to fund the university. Much smaller institutions, such as Hillsdale College, have chosen to decline Federal funds to carry out their full academic independence. Harvard and Dean Kagan were not willing to do so. They wanted both. They wanted money and the right to kick out the military.

I think she showed her legal judgment regarding the Solomon amendment in 2005 when she joined in an amicus brief of Harvard Law School professors to the U.S. Supreme Court in *Rumsfeld v. FAIR*, opposing the Solomon Amendment's application to Harvard Law School. Unlike the chief litigant—the formal appeal group—in the case, which raised a straightforward first amendment challenge to the Solomon amendment, the brief Ms. Kagan joined with other Harvard Law School professors made a novel argument of statutory interpretation that was too clever for the Supreme Court.

Her brief argued that Harvard Law School did not run afoul of the letter of the Solomon amendment because Harvard law school did not have a policy of expressly barring the military from campus. Harvard, she argued, barred recruiters who discriminate from campus. Her brief reasoned that the Solomon amendment shouldn't apply